

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

JITTAWEE CURLY BEAR CUB,

Defendant/Movant.

Cause No. CR 07-117-GF-BMM

ORDER DENYING CERTIFICATE
OF APPEALABILITY

This case came before the Court on Defendant/Movant Jittawee Curly Bear Cub's motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255.

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a), Rules Governing § 2255 Proceedings. A COA should issue as to those claims on which the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied if "jurists of reason could disagree with the district court's resolution of [the] constitutional claims" or "conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

On September 26, 2016, Bear Cub's § 2255 motion was granted in part and denied in part. As Bear Cub has now been resentenced, the order on the § 2255 motion is now final. *See United States v. Martin*, 226 F.3d 1042, 1048 (9th Cir. 2000) (discussing *Andrews v. United States*, 373 U.S. 334, 339-40 (1963)).

One of Bear Cub's claims was denied. Bear Cub did not present persuasive evidence that he unambiguously instructed counsel to file a notice of appeal. Consequently, Bear Cub did not make a substantial showing that he was denied his constitutional right to the effective assistance of counsel in filing an appeal. 28 U.S.C. § 2253(c)(2). A COA is not warranted on any issue connected with the claim determined adversely to Bear Cub.

Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is DENIED.

DATED this 16th day of November, 2016.



Brian Morris
United States District Court Judge